

FILED

2012 FEB 27 AM 9:52

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	)	SETTLEMENT AGREEMENT
	)	FOR RECOVERY OF RESPONSE
	)	COSTS
Homestake Mining Company Site)	
Grants, Cibola County, New Mexico	)	U.S. EPA Region 6
	)	CERCLA Docket No. 06-07-12
Homestake Mining Company of California,)	
SETTLING PARTY	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

**CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT
FOR RECOVERY OF RESPONSE COSTS**

February 2012

TABLE OF CONTENTS

I.	JURISDICTION . . . . .	.1
II.	BACKGROUND	1
III.	PARTIES BOUND	2
IV.	DEFINITIONS	2
V.	PAYMENT OF RESPONSE COSTS	4
VI.	FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT	5
VII.	COVENANT NOT TO SUE BY EPA	6
VIII.	RESERVATIONS OF RIGHTS BY EPA	7
IX.	COVENANT NOT TO SUE BY SETTLING PARTY	7
X.	EFFECT OF SETTLEMENT/CONTRIBUTION	8
XI.	RETENTION OF RECORDS	9
XII.	NOTICES AND SUBMISSIONS	10
XIII.	INTEGRATION/APPENDICES	10
XIV.	EFFECTIVE DATE	11

IN THE MATTER OF:	)	SETTLEMENT AGREEMENT
	)	FOR RECOVERY OF
	)	RESPONSE COSTS
Homestake Mining Company Site)	
Grants, Cibola County, New Mexico	)	U.S. EPA Region 6
	)	CERCLA Docket No. 06-07-12
Homestake Mining Company of California,)	
SETTLING PARTY	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Director, Superfund Division, EPA Region 6 by EPA Delegation No. R6-14-14-D.

2. This Settlement Agreement is made and entered into by EPA and Homestake Mining Company of California ("Settling Party"). Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Homestake Mining Company Superfund Site ("Site"), an inactive uranium mill undergoing closure pursuant to Nuclear Regulatory Commission License No. SUA 1471, near Grants, New Mexico. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). In response to the release or threatened release of hazardous substances at or from the Site, EPA plans to undertake response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

4. Based on the results of a remedial investigation performed from 1987 until 1989, EPA determined in 1989 that "the uranium mill and tailing embankments at the [Homestake] site, though a potential source of radon near the site, are not contributing significantly to off-site subdivision radon concentrations. EPA has concluded that the principle cause of elevated indoor radon in homes (homes having annual average radon concentrations exceeding 4 pCi/l) is related to local, native soil sources of radon in the subdivisions, and is a function of the type and quality of housing construction." Declaration for the Record of Decision by EPA Region 6 Regional Administrator, Robert E. Layton, Jr., dated September 27, 1989.

5. In 2010, as part of an overall assessment of structures for indoor radon gas in the Grants Mineral Belt, EPA initiated sampling south of the Homestake Mining Company

Superfund Site. The sampling protocol included, *inter alia*, sampling for radon gas (Rn-222) in indoor and outdoor air. Preliminary results from approximately nine of the residences exceeded the U.S. EPA action level for radon in indoor air of 4 pCi/l. Additional properties exceeding the action level for radon in indoor air may be identified as the sampling effort progresses. In order to abate the accumulation of radon in indoor air in excess of the action level, radon mitigation systems must be installed on each property. In performing the mitigation of indoor radon gas, EPA will incur response costs.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in connection with the Site.

7. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

a. "Additional Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA incurs and pays for radon abatement measures at or in connection with the Site, to the extent such costs exceed \$244,652, the amount EPA estimates is necessary to conduct radon abatement in fifteen (15) residences.

b. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-6975.

d. "Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XIV.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

j. "Parties" shall mean EPA and Settling Party.

k. "Response Costs" shall mean all costs, including but not limited to direct and indirect costs; that EPA incurs and pays for radon abatement measures at or in connection with residences in the subdivisions proximate to the Site where indoor air sampling conducted in 2011-2012 identified or may identify radon in excess of the U.S. EPA action level of 4 pCi/l. These residences include nine (9) identified from sampling concluded to date and as many as six (6) that may be identified from sampling not yet concluded. EPA's estimated direct and indirect costs for radon abatement of fifteen (15) residences is \$244,652.

l. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

m. "Settling Party" shall mean the Homestake Mining Company of California.

n. "Site" shall mean the Homestake Mining Company Site, located in the vicinity of Grants, Cibola County, New Mexico and generally shown on the map included in Appendix A.

o. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

10. Payment of Response Costs. Within 30 days after the Effective Date, Settling Party shall pay to EPA \$244,652 (\$179,023 direct costs plus \$65,629 indirect costs) to support its response to mitigate indoor radon gas.

11. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, Site/Spill ID Number 0618, and the EPA docket number for this action and shall be sent to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

12. At the time of payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 0618 and the EPA docket number for this action.

13. The total amount to be paid pursuant to Paragraph 10 shall be deposited by EPA in the Homestake Mining Company Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance mitigation of indoor radon at or in connection with the Site. After the work is completed, EPA shall perform an accounting of Response Costs. Any amounts remaining from the total amount paid pursuant to Paragraph 10 in the Homestake Mining Company Site Special Account will be remitted and returned to Homestake except in the following circumstances:

a. In the event that EPA and Homestake enter into an enforceable agreement pursuant to CERCLA for future work or payment of response costs prior to termination of this Settlement Agreement, any unused amounts remaining in the Homestake Mining Company Site Special Account may be applied to unreimbursed response costs or response actions remaining at the Site to be conducted under the terms of such subsequent agreement; or

b. In the event that EPA identifies additional (more than fifteen) residences in the subdivision proximate to the site requiring radon abatement, EPA and Homestake agree to confer on application of the unused amounts remaining in the Homestake Mining Company Site Special Account to radon abatement at the additional residences.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

14. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 10 (Payment of Response Costs) by the required due date, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment.

15. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 10 are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$100 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, Site Spill ID Number 0618, and the EPA Docket Number for this action. Settling Party shall send the check (and any accompanying letter) to the following address if payment is mailed through the U.S. Postal Service.

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Settling Party shall send the check (and any accompanying letter) to the following address if payment is sent through UPS, Federal Express, or Overnight Mail.

U.S. Bank
Government Lockbox 979076
U.S. EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

c. At the time of each payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall identify Site Spill ID Number 0618 and the EPA Docket Number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, any Settling Party who fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

VII. COVENANT NOT TO SUE BY EPA

18. Covenant Not to Sue by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs. This covenant shall take effect upon receipt by EPA of all amounts due under Paragraph 10 (Payment of Response Costs) and any interest or stipulated penalties due thereon under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

19. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 18. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs;
- c. liability for Additional Response Costs;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- e. criminal liability; and
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

20. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

21. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement of the Response Costs from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613;
- b. any claims arising out of the response actions at the Site for which the Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of New Mexico, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs or Additional Response Costs.

22. Nothing in this Settlement Agreement shall be deemed to compromise in any way or degree any claim by Settling Party against the United States pursuant to Title X of the Energy Policy Act of 1992, the Atomic Energy Act of 1954, the Uranium Mill Tailings Radiation Control Act of 1978, or any other program relating to the United States' liability for Cold War-era production of nuclear materials. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION

23. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenant Not to Sue by Settling Party), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

24. The Parties agree that the actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.

25. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Party has, as of the Effective Date, resolved its liability to the United States for Response Costs.

26. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of

such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

27. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section VII.

28. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payment(s) required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 25 and that, in any action brought by the United States related to the "matters addressed," Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XI. RETENTION OF RECORDS

29. Until 10 years after the effective date of this Settlement Agreement, Settling Party shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each

addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged or confidential.

31. Settling Party certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. NOTICES AND SUBMISSIONS

32. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA:

Chief, Enforcement Assessment Section (6SF-T)
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

As to Settling Party:

Grants Project Manager
Homestake Mining Company of California
P.O. Box 98
Grants, NM 87020

XIII. INTEGRATION/APPENDICES

33. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no

representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: "Appendix A" is a map of the Site.

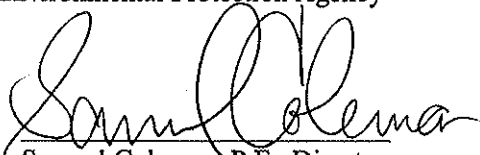
XIV. EFFECTIVE DATE

34. The effective date of this Settlement Agreement shall be the date of signature of this Settlement Agreement by EPA.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:



Samuel Coleman, P.E., Director
Superfund Division

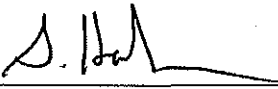
U.S. Environmental Protection Agency, Region 6

2/24/2012
Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of U.S. EPA Region 6 CERCLA Docket No. 06-07-12, relating to the Homestake Mining Company Site, Cibola County, New Mexico:

FOR SETTLING PARTY:

Homestake Mining Company of California
136 East South Temple, Suite 1800
Salt Lake City, Utah 84111

By: 

Gary Halverson, President
Homestake Mining Co. of California

2/13/2012
Date